IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

Writ Petition No.4l9 of 2005

Dr Indrajeet Mohite
aged 46 years, Indian Inhabitant
resident of at and post
Rethare Budruk, Taluka Karad
District Satara ..Petitioner

vs

l. Collector Satara
2. Krishna Sahakari Sakhar Karkhana
Ltd Rethare Budruk, Tal Karad
Dist. Satara through its Managing
Director
3. Sanjay Bhagwan Pawar
aged 37 years at and post
Rethare Budruk Tal Karad
Dist. Satara
4. Sunil Ganpatrao Pawar
r/o Rethare Budruk
taluka Karad Dist Satara
5. Shivaji Baburao Thorat
tal Karad Dist. Satara.. Respondents

Mr. K.K.Singhavi Senior Counsel with
Mr.A.Y.Sakhare, Sr Advocate i/b Mr.L.M.Acharya for
the petitioner
Mr. Pradeep M Patil AGP for respondent no.l
Mr. Vineet B Naik for respondent no. 2
Mr. C.J.Sawant, Sr Counsel with Mr. R.V.Govilkar
for respondent nos. 3 and 5
Dr. B.R.Naik Sr Counsel with Mr.Prashant Naik for
respondent no. 4

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 28.3.2005

P.C:

l. By this petition under Article 226 of the Constitution, the petitioner seeks to challenge the order of the Collector dated 28.l.2005, overruling

the objections of the petitioner to the draft voters list of Krishna Sahakari Sakhar Karkhana,which is a specified society within the meaning of section 73G of the Maharashtra Cooperative Societies Act, l960, hereinafter referred to as the 'said Act'. The term of 5 years of the Board of Directors of the said Karkhana had come to an end in August 2004 and the elections for the next term of 2004-2009 become due. In the meanwhile, the State Government invoking its power under section 73-lB of the said Act postponed elections to all sugar factories from time to time due to Lok Sabha elections and thereafter due to Assembly elections. Ultimately draft voters list was published by the Collector on 30.ll.2004. The petitioner and one Jayvantrao Savant raised various objections to the said draft voters list. However, only one objection was pressed before us at the time of hearing . It was contended that about 5270 members who were enrolled after 30th June 200l are ineligible to vote in view of the statutory bar contained under section 27(3A) of the said Act read with rule 4(l) of the Maharashtra Cooperative Specified Cooperative Societies Elections to Committee Rules, l97l, hereinafter referred to as the 'said Rules'.

2. The contention of the petitioner is that under rule 4(l) of the said Rules a voters list has to be prepared by every society in the year in which general election is due to be held. The persons who have completed minimum period of two years as members from the date of their enrolment before the 30th June of the year immediately preceding the year in which such election is due shall be included in the provisional list. Accordingly to the petitioner the words "in the year in which the general election is due to be held" have been construed by the Supreme Court to mean the year in which general election become due and not the year in which the general election is actually held. Therefore the bar of 2 years needs to be calculated on and from 30th June 2003 which means cut off date for the purpose of rule 4(l) of the said Rules read with section 27(3A) of the said Act would be 30.6.200l. Consequently, the members who are enrolled after 30.6.200l would not be entitled to vote in the election. In this connection, heavy reliance is placed on the judgement of the Supreme Court in the case of Ramchandra Ganpat Shinde and anr vs State of Maharashtra and another, AIR l994 SC l673.

3. Mr. Singhvi, learned counsel appearing for the petitioner contended that the Collector erroneously came to the conclusion that under rule 4(l) the date 30th June would be the nearest date for the purpose of calculating two years period contemplated under section 27(3A) of the Act. The interpretation of the Collector is wholly erroneous as the Collector has ignored the express words of the rule namely "30th June of the year immediately preceding the year in which such an election is due". Therefore according to Mr. Singhvi the names of 5270 members, who were made members after 30th June 200l are liable to be excluded from the voters list. Mr. Singhvi submitted that the order of the Collector is exfacie illegal and is contrary to the law laid down by the Supreme Court in R.G.Shinde’s case. As against this, Shri C.J.Sawant, Dr. B.R.Naik and Shri Vineet Naik on behalf of the contesting respondents raised a preliminary objection that the election process has already been set in motion and hence it would not be proper for this court to now hold up the election process by entertaining this petition. It is contended that after passing the impugned order on 28.l.2005 the Collector has published final

voters list on 4.2.2005 and list of validly nominated candidates has been published on l8.3.2005 and voting is to take place on l7.4.2005. It is submitted that when the statute has provided substantive remedy by way of election petition under section l44T of the Act, this court should not interfere in the exercise of its extra ordinary powers under Article 226 of the Constitution of India. In so far as interpretation of rule 4(l) is concerned, the learned counsel for the respondents submitted that section 23(3A) has been inserted in the statute after the decision of the Supreme Court in R.G.Shinde's case and the provision requiring two years membership on the relevant date was also interpreted later. The submission is that the amended rule 4(l) is not consistent with the provisions of section 23(3A) and the provisions of section would prevail which entitles a member to vote after completion of two years before voting. Strong reliance is placed on the Full Bench decision of this court in Sandip Vasantrao Lahare vs The State of Maharashtra and ors, (Writ Petition No.2039 of 2004 decided on 23.l2.2004).

4. In our opinion the preliminary objection raised on behalf of the respondents is liable to be

upheld. It is not disputed that after the impugned order of the Collector election process has commenced and has reached the stage of declaration of validly nominated candidates.It is also not disputed that the remedy is available to the aggrieved party to file election petition to challenge the election of the returned candidate on the ground of illegality committed in preparation of the voters list. It has been repeatedly stressed by the Supreme Court that it is not appropriate for the High Court to interfere with the election process at an intermediate stage namely after commencement of the election process and before declaration of the result. In this connection a reference can usefully be made to two decisions of the Supreme Court. First decision is reported in Lakshmi Charan Sen and ors vs. A.K.M. Nassan Uzzaman and ors, AIR l985 SC l233 where the question which came up for consideration was examination of claims for inclusion of names in electoral rolls and the objection relating to the inclusion of certain names therein. The Court held that the fact that claims for inclusion of names in the electoral roll and the objections relating to the inclusion of names therein are not finally disposed of cannot arrest the process of election

to the Legislature. It was held that proper remedy is to file election petition under Representation of Peoples Act. The next decision is in the case of S.T Muthuswami vs K Natarajan and ors, AIR l988 SC 6l6 where Venkataramiah J. reiterating that the High Court should not interfere with election process, further observed that even if there is any mistake committed by either the election authority or the Returning Officer in the allotment of symbol, the said mistake can only amount to a non-compliance with the provisions of the Act or the rules made thereunder and would not enable the court to arrest the process of the election. The proper remedy is to file election petition.

5. In a recent judgment in Shri Sant Sadguru Janardan Swami (Moingir Maharaj) Sahakari Dugdha Utpadak Sanstha and anr vs. State of Maharashtra and ors, (200l) 8 SCC 509, the Supreme Court specifically held that the preparation of the electoral roll being an intermediate stage in the process of election of a specified society and the election process having been set in motion, theCourt should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while

preparing the electoral roll. If there is breach of rules or certain mandatory provision were not complied with while preparing the electoral roll,same can be challenged by means of election petition before the tribunal. The Supreme Court distinguished the decision in R.G.Shinde's case as in that case the parties in the petition obtained a collusive order by playing fraud on the court and such an order was made the basis of election.

6. Mr.Singhvi submitted that in Ahmednagar Zilla S.D.V. & P Sangh Ltd and anr vs. State of Maharashtra and ors, (2004) l SCC l33 the Supreme Court has upheld the directions issued by the High Court to the authorities for inclusion of names of members in the electoral roll in accordance with unamended byelaws of the society. The learned counsel submitted that the argument that the preparation of the electoral roll is an intermediatary stage in the process of election and as such High Court committed an error of jurisdiction was expressly rejected by the Supreme Court. We are afraid this decision has no application to the facts of the present case. In that case the Supreme Court held that rule 8l of the Maharashtra Specified Cooperative Societies

Election to Committee Rules, l97l provides for ground for declaring election to be void. However, validity of the byelaws cannot be gone into by the tribunal in election petition under rule 8l. In view of the fact that the respondents had no other remedy except to file appeal before the appellate authority and once it was held that the amendment of the byelaw was not in conformity with the law the electoral roll prepared on the basis would fall down. In the present case the only argument of the petitioner is that the Collector misinterpreted rules and the voters list prepared by the Collector is defective. In view of the various decisions of the Supreme Court, it is obvious that even assuming that the grievance of Mr.Singhvi is right, it is not permissible for this court to disturb the election programme by entertaining this petition. In our view the present petition is not maintainable and the petitioner may seek relief in election petition, if so advised.

. Petition is accordingly dismissed.